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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/658,658	09/08/2000	Michael James McLaughlin JR.	50277-0357	3337

29989 7590 07/07/2004

HICKMAN PALERMO TRUONG & BECKER, LLP  
1600 WILLOW STREET  
SAN JOSE, CA 95125

EXAMINER

DINH, DUNG C

ART UNIT	PAPER NUMBER
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2153

DATE MAILED: 07/07/2004

5

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/658,658

Applicant(s)

MCLAUGHLIN, MICHAEL JAMES

Examiner

Dung Dinh

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

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**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

*(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.*

**Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant disclosed Prior Art and further in view of Sharma et al. "Scalable Timers for Soft State Protocols".**

As per claims 1-5, Applicant disclosed prior art system for distributed transaction over the Internet using stateless protocol HTTP that terminates based on value from one or more fixed time periods [specification pages 25-26]. The disclosed prior art does not adjust the time period values based on monitored latency information.

Sharma teaches an improved method over fixed time out periods for transaction over the Internet comprising the steps of:

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gathering latency information to generate one or more time period values [p.222 top of col.2 "Scalable timers replace the fixed time settings ... with timers that adapt to the volume ... and available bandwidth"];

determining whether to terminate a transaction based on one or more of the time period values [see p.222 col.1 and p.223 col.1 2nd paragraph, p.224 col.2 "Timing out network state"];

determining whether the latency information indicates that changes in the network satisfy adjustment criteria and adjust one or more of the time period values [see p.223 col.2 "Scalable Timers"].

It would have been obvious for one of ordinary skill in the art to apply the teaching of Sharma to the disclosed prior art because it would have improved the performance of the disclosed prior art system [see Sharma's conclusion p.229].

As per claim 6 and 7, Sharma does not disclose setting the time period value based on time period when a message is transmitted and an acknowledgement for the message is received. However, it would have been obvious for one of ordinary skill in the art in to set the time values based at least on the round trip time so as to ensure an adequate minimum timeout value.

As per claim 8, it would have been obvious for one of ordinary skill in the art to generate at least two transmit times

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because it would have enable redundancy and statistically valid measurement of the transit time.

As per claim 9, Sharma does not disclose pining a server. It is well known in the network communication art to measure transmit time by pinging the other node. Hence, it would have been obvious for one of ordinary skill in the art to measure transit time to a server by pinging that server.

As per claim 10, Sharma does not teach determining a transaction execution threshold. This step is inherent in the disclosed prior art in setting the time values for transaction acknowledgements. It would have been obvious for one of ordinary skill in the art to take into account the time needed for a participant to execute operations for a transaction in computing the timeout values so to set an adequate minimum response time values.

As per claim 11, the recited limitation is inherent in the operation of the disclosed prior art transaction.

As per claims 12-14 and 19, they are rejected under similar rationale as for claims 1-5 above. Sharma does not teach adjusting the time period based on the transaction execution period. Sharma only discusses adjusting the time values based on the traffic and communication bandwidth. However, given the teaching of Sharma as a whole to dynamically adjust the time out

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values instead of using fixed values. One of ordinary skill in the art would have been motivated to take into account the execution time of transaction operation in calculating the time period values in order to assure a minimum time adequate for a participant to receive, to execute, and to return the result/acknowledgement.

As per claims 15 and 20, it is rejected under similar rationale as for claims 1-5 above. It is apparent from Sharma teaching that that changes in latency (changes traffic or bandwidth) would cause adjustment to the timeout values.

As per claims 16-18, they are rejected under similar rationale as for claims 1-5 above.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dung Dinh whose telephone number is (703) 305-9655. The examiner can normally be reached on Monday-Thursday from 7:00 AM - 4:30 PM. The examiner can also be reached on alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton Burgess can be reached at (703) 305-4792.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

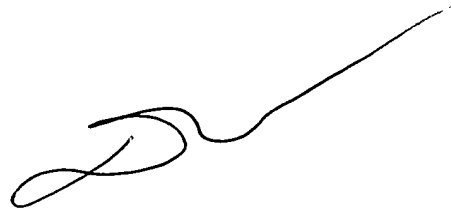
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system,

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see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to be 'Dung Dinh', with a long, sweeping horizontal stroke extending to the right.

Dung Dinh  
Primary Examiner  
June 26, 2004